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agreed to sell it to him. The plaintiff, believing in good faith that the goods were intended for him, paid a bill of exchange drawn on him, to which an order bill of lading was attached, and demanded the flour from the carrier. The consignor had, in the meantime, discovered his mistake and had induced the carrier to return the flour to him. The plaintiff sued the railroad company for conversion of the flour. *Held*, that he could not recover. *Jones v. Chicago, B. & Q. R. Co.*, 170 N. W. 170 (Neb.).

Generally, to-day, the *bonâ fide* purchaser of an order bill of lading acquires an indefeasible title to the goods, and the carrier may not deliver them to another. *Munroe v. Philadelphia Warehouse Co.*, 75 Fed. 545; *Commercial Bank v. Armsby*, 120 Ga. 74, 47 S. E. 589; UNIFORM SALES ACT, §§ 33, 38. But see *Adrian Knitting Co. v. Wabash Ry. Co.*, 145 Mich. 323, 108 N. W. 706. *Cf. Shaw v. Railroad Co.*, 101 U. S. 557, 565. The question in the principal case is whether the plaintiff is in fact the purchaser of the bill of lading and of the goods. Here, as everywhere in contractual law, it is expressed, not secret, intention that is considered. *Mansfield v. Hodgdon*, 147 Mass. 304, 17 N. E. 544; *Wood v. Allen*, 111 Iowa, 97, 82 N. W. 451. See WILLISTON, SALES, § 5. By sending forward the bill of exchange with bill of lading attached, the consignor unequivocally expressed an intention to sell the flour to the plaintiff. *Evans v. Marlett*, 1 Ld. Raym. 271; *Wigton v. Bowley*, 130 Mass. 252. The plaintiff, in good faith, so understood the consignor's intention and acted on it, completing the sale. Moreover, if actual and not expressed intention were considered, the consignor, although he also intended to sell to one to whom he was under contractual obligations, primarily intended to sell to the person to whom he consigned the goods. It is this primary intention that must control. *Edmunds v. Merchants' Transportation Co.*, 135 Mass. 283. *Cf. Cundy v. Lindsay*, 3 A. C. 459. See WILLISTON, SALES, § 635. The principal case, therefore, cannot be supported.

WAR ALIENS — STATUS OF ALIEN ENEMIES IN THE COURTS OF A BELLIGERENT. — In a tort action, it appeared at the trial that the plaintiff was an alien enemy, a subject of Germany, but resident in the United States and not in internment. The trial court nonsuited the plaintiff. *Held*, that the nonsuit was improper. *Heiler v. Goodman's Motor Express Van & Storage Co.*, 105 Atl. 233 (N. J. L.).

It is uniformly held that an alien enemy resident in the hostile territory cannot maintain an action as plaintiff. *Brandon v. Nesbit*, 6 T. R. 23; *Le Bret v. Papillon*, 4 East, 502; *Rothbarth v. Herzfeld*, 179 App. Div. 865, 167 N. Y. Supp. 199. The modern basis for these decisions — that to allow a recovery in such a case would by so much diminish the resources of the home country and strengthen the enemy country — has no application where the plaintiff resides in the home territory. See *Hepburn's Case*, 3 Bland, Ch. (Md.) 95, 120; *Janson v. Driefontien*, [1902] A. C. 484, 505; *Porter v. Freudenberg*, [1915] 1 K. B. 857, 868. Further, the common-law rule allowed an enemy subject resident in the home territory to sue on the theory that, by permitting him to remain a resident, the sovereign took him under his protection. *Wells v. Williams*, 1 Ld. Raym. 282; *Clarke v. Morey*, 10 Johns. (N. Y.) 69. The same principles have been recognized in our courts and the courts of England and Canada during the present war. *Topay v. Crow's Nest Pass Coal Co.*, 29 West. L. R. 555 (Canada); *Princess Thurn & Taxis v. Moffett*, [1915] 1 Ch. 58; *Arndt-Ober v. Metropolitan Opera Co.*, 182 App. Div. 513, 169 N. Y. Supp. 944. See 28 HARV. L. REV. 312. See also 31 HARV. L. REV. 470. One difference should be noted between the English and the American cases. England, applying the common-law rule, allows an enemy subject, even though he has been interned as a civilian prisoner of war, to maintain an action. *Schaffenius v. Goldberg*, [1916] 1 K. B. 284. *Cf. Sparenburg v. Bannatyne*, 1 Bos. & P. 163.

But in the United States an interned subject of an enemy country was, by the President's proclamation of February 5, 1918, in accordance with a provision in the act, brought within the term "enemy" in the Trading with the Enemy Act of October 6, 1917. See 40 STAT. AT L. 411. This has the effect of putting such interned enemy subjects under a disability to sue except in the limited class of suits specifically mentioned by the act. See *Tortoriello v. Seghorn*, 103 Atl. 393, 394 (N. J. Eq.); *Arndt-Ober v. Metropolitan Opera Co.*, 182 App. Div. 513, 519; 162 N. Y. Supp. 944, 948.

WARRANTY — IMPLIED WARRANTY OF PLANS AND SPECIFICATIONS. — The plaintiff contracted to build a dry dock for the government in accordance with plans and specifications prepared by government officials. These provided first, for the relocation of an intersecting sewer, which work the plaintiff performed. Due to a defect in the plans the sewer proved insufficient and burst, flooding the excavation of the dry dock. The government refused to assume responsibility for the damage done, and upon the plaintiff's refusal to continue with the work annulled the contract. The plaintiff sued for work done and his profits. *Held*, that he could recover. *The United States v. Spearin*, U. S. Sup. Ct. Off., October Term, 1918, Nos. 44 and 45.

No supervening difficulty short of making performance impossible will excuse a party from completing that which he has contracted to do. *Walton v. Waterhouse*, 2 Wms. Saunders, 422 a, note 2; *Beebe v. Johnson*, 19 Wend. (N. Y.) 500; *Phillips v. Stevens*, 16 Mass. 238. Thus, destruction by fire, lightning or subsidence of the soil will not warrant a refusal on the part of the builder to render full performance, or entitle him to compensation for what he has already done. *Adams v. Nichols*, 19 Pick. (Mass.) 275; *School District v. Dauchy*, 25 Conn. 530; *Stees v. Leonard*, 20 Minn. 494; *Dermott v. Jones*, 2 Wall. (U. S.) 1. But where the difficulty results from defective plans and specifications, the general rule has been held not to apply, since the owner impliedly warrants the sufficiency of the plans he submits. *Beniley v. State*, 73 Wis. 416, 41 N. W. 338; *Faber v. City of New York*, 223 N. Y. 496, 118 N. E. 609. *Penn. Bridge v. City of New Orleans*, 222 Fed. 737. The English and some American courts deny the existence of such a warranty. *Thorn v. Mayor of London*, 1 A. C. 120; *Magnan v. Fuller*, 222 Mass. 530, 111 N. E. 399; *Leavitt v. Dover*, 67 N. H. 94, 32 Atl. 156; *Lonergan v. San Antonio Loan & Trust Co.*, 101 Tex. 63, 104 S. W. 1061. It seems erroneous to lay down a hard-and-fast rule that an owner does or does not warrant his plans. The existence of an implied warranty, as in the law of sales, should depend upon whether there has been a justifiable reliance by one on the other's judgment, which the particular facts of each case alone can decide. See *Kellogg Bridge Co. v. Hamillon*, 110 U. S. 108; WILLISTON, SALES, § 231. The respective knowledge of the parties, the opportunity for inspection by the builder, and the visibleness of the defects should all be considered in determining the question.

BOOK REVIEWS

INTERNATIONAL RIVERS. A Monograph based on Diplomatic Documents. By G. Kaackenbeek, B.C.L. Grotius Society Publications, No. 1. London: Street and Maxwell. 1918. pp. xxvi. 255.

"Et quidem naturali jure communia sunt omnium hæc: . . . aqua profluens . . ." (JUST. INST., II, 1, 1). At the Congress of Vienna in 1815 a body of diplomats controlling the destinies of the world took up for the first time as a general European problem the question of navigation upon "international